



Summary of Wisconsin's New Brownfields Programs and Initiatives

Prepared by the Wisconsin Department of Natural Resources

Wisconsin's 1997-1999 budget, Wisconsin Act 27, marks a new era for the State's efforts to redevelop brownfields properties. In addition to building on existing Department of Natural Resources' programs, several new State programs, including funding for investigations and cleanups, will be available for public and private parties undertaking the cleanup and redevelopment of brownfields. These programs will provide benefits worth over \$100 million. Listed below is a summary of the new brownfields programs and initiatives in the Departments of Natural Resources, Commerce, Administration, and Revenue. [Publication RR-563-97]

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Veto:

Certified Remediation Professionals

*Copies of the budget can be purchased by calling the Legislative Document Center at 608 - 266-2400.
The budget can be accessed via the internet :
<http://www.legis.state.wi.us/lrb/budget/budget97.html>*

Financial Assistance

Brownfield Grant -- \$10 million, administered by the Department of Commerce, is available for public and private projects for expenses including demolition and rehabilitation of facilities and investigations and cleanups. (s. 560.13, Wis. Stats.)

- Eligible sites are limited to those where responsible parties either cannot pay or cannot be located.
- At least seven demonstration grants must be awarded to communities with populations less than 30,000.
- Award priority is based on economic development potential, positive effect on the environment, level and quality of applicant support, and innovation in cleanup and redevelopment.
- Cash or in-kind matches for the grants are required. For grants less than \$300,000, a match of at least 20% of the project cost is necessary. For a grant between \$300,000 and \$700,000, a match of at least 35% of the project cost is necessary. For grants between \$700,000 and \$1,250,000, a match of at least 50% of the project cost is necessary.

Land Recycling Municipal Loan – A \$20 million loan program, administered by the Department of Natural Resources, is available to municipalities for their contaminated properties and cover expenses for investigations, cleanup. (s. 281.60)

- Sites or facilities, must be owned by the municipality and the contamination can not be caused by the municipality with the exception of landfills.
- Interest rates will be 55% of the market interest rate.
- Applications need to be submitted by April 30 preceding the beginning of the fiscal year (fiscal year begins in July).
- Award priority is based on potential of project to reduce environmental pollution and threats to human health and preventing the development of undeveloped land.
- Only 40% can be directed to landfills in each fiscal year.
- Loan amounts for a single community can be no greater than 25% of the total fiscal year allotments.

Development Zone Tax Credits -- A 50% tax credit for remediation costs is available in Development Opportunity Zones, Development Zones and Enterprise Development Zones across the state. This expands the tax credit from 7.5%.(s. 71.28.)

Brownfields Remediation Loan Guarantee Program – Provide \$4 million to the Wisconsin Development Reserve Fund in the Wisconsin Housing and Economic Development Authority to support guarantees for private bank loans of up to \$500,000 for land redevelopment. This funding can be expected to leverage over \$20 million in private capital for site assessment and redevelopment (s. 234.88)

Environmental Remediation Tax Incremental Financing -- A political subdivision can establish a tax increment financing on a property that they owned and cleaned up. Once the property is sold, a tax increment based on the new value of the property is allocated to

payback the cleanup expenses to the political subdivision. (s.66.462)

- Eligible costs include: capital costs, financing costs, administrative and professional costs for investigations and remediation. Monitoring costs for 2 years after the DNR certifies the cleanup are also eligible.
- Cities, towns, villages and counties can create the ER TIF.
- The ER TIF can be used for 16 years after certified cleanup or until the incurred expenses are paid, whichever comes first.

Cancellation of Delinquent Taxes -- Counties and the City of Milwaukee can forgive delinquent property taxes if the property is contaminated, an environmental assessment has been conducted to determine contamination exists, and an agreement has been reached on the cleanup with the owner, County or City and the DNR.(s. 75.105.)

Bonding Funds at Spill Sites and Increases in Bonding Authority – An increase of bonding authority to \$43 million includes an increase for the Remediation and Redevelopment program from \$22.5 million to \$38 million and directs \$5 million for sediment cleanup. (s. 20.866(2)(tg))

Dry Cleaner Environmental Response Program – A reimbursement program for the investigation and cleanup costs of dry cleaning facilities has been created at the Department of Natural Resources. The DNR will determine the order of awarding reimbursements. In each fiscal year, 9.7% of funds will be used toward immediate response actions. Dry cleaner owners and operators need to submit an application to the DNR to participate.(s. 292.65.)

Stewardship Funds - Local units of government and nonprofit conservation organizations are eligible to apply for grants under the Stewardship Program to acquire brownfields properties if the properties are going to be used for urban green space or for the preservation or restoration of urban rivers or river fronts for economic revitalization and outdoor recreation activities which involve natural resources. In addition, Stewardship funds may be granted to nonprofit conservation organizations to acquire land for recreational trails which have been specifically designated as "state trails" under the state trail system. (various provisions in s. 23, Wis. Stats.)

New Federal Tax Deduction for Cleanups (Federal Taxpayer's Relief Act) - In certain geographic areas across the state, cleanup costs (with the exception of petroleum contamination) can now be deducted as business expenses in the year incurred. In the past, cleanup costs had to be capitalized over several years.

- This federal tax deduction sunsets on January 1, 2001.
- Eligible areas include: EPA brownfield pilot areas designated prior to February 1997; census tracts where 20% or more of the population is below poverty level; census tracts that have a population under 2,000, have 75% or more of their land zoned for industrial or commercial use, and are adjacent to one or more census tracts with a poverty rate of 20%; and any Empowerment Zone or Enterprise Community.

- The taxpayer applying for the deduction must get a certification from the DNR that the property is in a targeted area and has conducted a cleanup.

Assistance From State Agencies

Redevelopment Assistance -- Authorize DNR to provide technical and redevelopment assistance, such as: off-site letters, lease letters, general comfort letters, close out letters, and reviews of technical reports. Once rules are in place, fees can be assessed by the DNR for this assistance.(s. 292.55)

Business Development Assistance Center (ombudsperson) -- Expand the existing Permit Information Center in the Department of Commerce into a ~~one-stop~~ Business Development Assistance Center, which will coordinate state agency redevelopment assistance efforts, serve as an ombudsperson for contaminated land redevelopment efforts, and provide information and telecommunication technology linkages to geographic information systems, internet web sites and other redevelopment databases (s. 560.44.)

Negotiated Schedule -- Clarifies DNR authority to negotiate flexible enforcement agreements under the Spill Law if the discharge does not endanger public health. The DNR may charge fees to offset the costs of negotiating and entering into an agreement (s. 292.11(7)(d)1.)

Voluntary Party Liability Exemption – Expand the original “purchaser” liability exemptions established under the original Land Recycling Act (1994) with a more broad definition of who can receive the full release from liability once an investigation and cleanup is complete. The statute replaces “purchaser” with “voluntary parties,” whom is defined as a person who did not intentionally or recklessly cause the release of a hazardous substance on a property. Once a DNR-approved investigation and cleanup are completed in accordance with state law and the NR 700 series, the voluntary party is exempt from certain provisions in the Spill, Solid Waste and Hazardous Waste laws and rules promulgated under those provisions. DNR can assess fees for this work (s. 292.15(2)(a).)

In addition, modifications to the Voluntary liability exemption allows DNR to approve partial remediation of property, once an investigation of the property is approved by the DNR. Allows certificate of completion for portion of site or certain substances. Party is still responsible to remediate contamination remaining on the property. Some of the conditions for issuance of the partial cleanup certificates are: if public health is not endangered from a discharge on or originating from the property; activities proposed for the property will not contribute to a discharge of a hazardous substance; owner allows DNR or others access; and the owner agrees to address environmental problems remaining on the property. The Department may assess fees to offset the costs associated with this activity (s. 292.15(2)(am).)

Legal Protections

Civil Immunity for Local Governmental Units – If a local governmental unit acquires property through tax delinquency proceedings (or from a county that used tax delinquency proceedings), as the result of an order by a bankruptcy court, through condemnation or other proceedings under ch. 32, it is immune from civil liability related to a hazardous substance discharge on or from that property if they no longer own or control the property. (s. 292.26.)

Property Affected by Off-site Discharge -- Authorize DNR to issue written commitments of no legal or administrative action to the owner of properties contaminated by off-site discharges in soil or the groundwater, where the owner can substantiate that the source is not from their property. DNR can assess fees for this work (s. 292.13.)

Responsibility of Persons Conducting Investigations – Parties who conduct investigations are not considered responsible parties, if they do not possess or cause a discharge. (s. 292.19.)

Expansion of Municipal Liability Exemption – Local governmental units that acquire property through tax delinquency proceedings, through condemnation or other proceedings under ch. 32, or that acquire the property for the purpose of slum clearance or blight elimination are exempt from certain provisions in the Spill Law. (292.11(9)(e) 1m. b.).

Economic Development Corporation Exemption

In addition to local governmental units, certain economic development corporations [i.e., s. 501(c) corporations, as defined by Internal Revenue Code] that acquire property to further the economic development are exempt from the Spill Law if they enter into an agreement with the DNR to investigate and cleanup the property no later than 3 years after acquisition. (s. 292.11(9)(e)1s.)

Responsibilities of Local Governmental Units That Acquire Property—Local Governmental Units that acquire contaminated land and plan to use or redevelop these properties without conducting an investigation and cleanup in accordance with NR 700 are obligated to protect human health based on that property’s future use, as directed by the Department of Natural Resources, if no remedial action is planned. (s 292.11(9)(e)4.)

Lender Issues

Lender Liability Schedule Modifications – Broadens existing law to allow lenders to use an environmental assessment that was conducted prior to the lender’s acquisition of a property to qualify for the lender liability exemption. If a lender elects to submit to the DNR an environmental assessment that is more than one year old, the lender must provide specific updated information about the site and the DNR will determine its adequacy. DNR can assess fees to review materials submitted by the lender (s. 292.19.)

Brownfields Remediation Loan Guarantee Program - see page 2 of this summary.

Other Initiatives

Brownfields Study - Directs the DNR to lead a study group, in cooperation with the Departments of Commerce, Revenue, Transportation, Administration, and Agriculture, Trade and Consumer Protection, to study a number of policy issues, including future funding for brownfields cleanups; optional methods to clean up groundwater on an area-wide, rather than property-specific basis; study the effectiveness of existing laws; and evaluate need for additional legislative proposals for brownfields. (Non statutory provisions - DNR - (6g))

Innovative Technology/Competitive Bidding Waiver – This provision authorizes the Governor to waive competitive bidding when it is determined to be in the interest of the state and that the Department has determined that an innovative or patented technology is the best remedial alternative (s. 23.41.)